

Christine Pham, CA Bar # 227033
LEGAL HELPERS, P.C.
260 California Street, Suite 801
San Francisco, CA 94111
Tel: 866.339.1156
Fax: 312.822.1064
Email: cph@legalhelpers.com
Attorneys for Plaintiff Bonnie Hale

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RICHARD W. WIEKING
CLERK, U.S. DISTRICT COURT
N.D. CALIF. SAN JOSE

CPT

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

Bonnie J. Hale,

Plaintiff,

v.

Northstar Location Services, LLC,

Defendant.

Case No. **CV 10- 4473**

**COMPLAINT FOR DAMAGES
UNDER THE FAIR DEBT COLLECTION
PRACTICES ACT, ROSENTHAL FAIR
DEBT COLLECTION PRACTICES ACT,
AND TELEPHONE CONSUMER
PROTECTION ACT**

PVT

DEMAND FOR JURY TRIAL

PARTIES

1. Plaintiff is a natural person who resided in Palo Alto, California at all times relevant to this action.
2. Defendant is a New York limited liability company that maintained its principal place of business in Cheektowaga, New York at all times relevant to this action.

JURISDICTION

3. Pursuant to 28 U.S.C. §1331, the Court has Federal Question Jurisdiction over Plaintiff's claims under the Fair Debt Collection Practices Act, 15 U.S.C. §1692 *et seq.* ("FDCPA").
4. Pursuant to 28 U.S.C. §1331, the Court has Federal Question Jurisdiction over Plaintiff's claims under the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* ("TCPA").

5. Pursuant to 28 U.S.C. §1367(a), the Court also has Supplemental Jurisdiction over Plaintiff's claims under the Rosenthal Fair Debt Collection Practices Act, California Civil Code § 1788 *et seq.*, ("RFDCPA") because they share a common nucleus of operative fact with Plaintiff's claims under the FDCPA and TCPA.

VENUE AND INTRADISTRICT ASSIGNMENT

6. Pursuant to 28 U.S.C. §1391(b)(2), venue is proper because a substantial part of the events giving rise to this claim occurred in this judicial district.

7. Assignment to the San Jose Division is appropriate because Plaintiff's claims arose in Santa Clara County.

FACTS COMMON TO ALL COUNTS

8. Defendant regularly uses the telephone and mails to collect debts that are owed to others in a business the principal purpose of which is the collection of debts.

9. Defendant is a "debt collector" as defined by the FDCPA, 15 U.S.C. §1692a(6).

10. Defendant is a "debt collector" as defined by the RFDCPA, California Civil Code §1788.2(c).

11. Defendant attempted to collect from Plaintiff a "debt" as defined by the FDCPA, 15 U.S.C. §1692a(5), which Plaintiff allegedly owed to JP Morgan Chase, NA in connection with a bank account that Plaintiff maintained for personal, family, or household purposes.

12. The alleged debt arose from a "consumer credit transaction" as defined by the RFDCPA, California Civil Code §1788.2(e).

13. Plaintiff is a "consumer" as defined by the FDCPA, 15 U.S.C. §1692a(3), because Defendant has alleged that Plaintiff owes a debt.

1 14. On or around May 17, 2010, Defendant mailed Plaintiff a letter demanding payment of the
2 debt.

3 15. On or around June 1, 2010, Plaintiff mailed Defendant a letter in which Plaintiff disputed the
4 debt and instructed Defendant to "cease any and all attempts to collect this sum from me."
5

6 16. With this letter Plaintiff attached copies of bank account statements showing that Plaintiff
7 had already paid the debt and that JP Morgan Chase actually owed Plaintiff \$0.72.

8 17. Plaintiff also sent a copy of this letter to the Federal Trade Commission.

9 18. On June 15, 2010, Defendant mailed Plaintiff a letter in connection with the collection of the
10 debt.
11

12 19. On or around September 2, 2010, Defendant telephoned Plaintiff in connection with the
13 collection of the debt.

14 20. During this communication, Defendant falsely represented that a judgment would be entered
15 against Plaintiff if she did not pay Defendant despite the fact that Defendant did not know
16 whether a lawsuit would ever be filed against Plaintiff and certainly did not know if a
17 judgment would ever be entered against Plaintiff in such a case.
18

19 21. On numerous occasions throughout September 2010, Defendant used an automatic telephone
20 dialing system to call Plaintiff's cellular telephone number and left a prerecorded voice
21 message in Plaintiff's voicemail.
22

23 22. Defendant did not have Plaintiff's prior express consent to call Plaintiff's cellular telephone.

24 23. Any consent to call Plaintiff's cellular telephone that could be claimed by Defendant was
25 revoked by Plaintiff's letter of June 1, 2010 instructing Defendant to cease any and all
26 attempts to collect the debt.
27
28

COUNT ONE

Violation of the Fair Debt Collection Practices Act

24. Plaintiff incorporates each of the preceding allegations as if specifically stated herein.

25. Defendant violated 15 U.S.C. §1692c(c) by communicating with Plaintiff to collect the debt despite receipt of written instructions from Plaintiff to cease communications.

COUNT TWO

Violation of the Fair Debt Collection Practices Act

26. Plaintiff incorporates each of the preceding allegations as if specifically stated herein.

27. Defendant violated 15 U.S.C. §1692e by using false, deceptive, or misleading representations in connection with the collection of the debt.

COUNT THREE

Violation of the Rosenthal Fair Debt Collection Practices Act

28. Plaintiff incorporates each of the preceding allegations as if specifically stated herein.

29. Defendant violated California Civil Code § 1788.13(j) by falsely representing that a legal proceeding had been, was about to be, or would be instituted against Plaintiff unless payment of the debt was made.

COUNT FOUR

Violations of the Telephone Consumer Protection Act

30. Plaintiff incorporates each of the preceding allegations as if specifically stated herein.

31. Defendant willingly and knowingly violated 47 U.S.C. § 227(b)(1)(A) on numerous occasions by each time calling Plaintiff's cellular telephone using both an automatic telephone dialing system and a prerecorded voice without Plaintiff's prior express consent.

JURY DEMAND

32. Plaintiff demands a trial by jury.

PRAAYER FOR RELIEF

33. Plaintiff prays for the following relief:

- a. Judgment against Defendant for actual damages, statutory damages, costs, and reasonable attorney's fees pursuant to the FDCPA, 15 U.S.C. §1692k.
- b. Judgment against Defendant for actual damages, statutory damages, and reasonable attorneys' fees and costs pursuant to the RFDCPA, California Civil Code § 1788.30.
- c. Judgment against Defendant for statutory damages pursuant to the TCPA, 47 U.S.C. § 227(b)(3).
- d. For such other legal and/or equitable relief as the Court deems appropriate.

RESPECTFULLY SUBMITTED,

Legal Helpers, P.C.

By: Christine Pham
Christine Pham
260 California Street, Suite 801
San Francisco, CA 94111
Tel: 866.339.1156
Fax: 312.822.1064
Email: cph@legalhelpers.com
Attorneys for Plaintiff